

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

DONNELL DEVON SMITH,

Petitioner,

v.

JUSTIN JONES, et al.,

Respondents.

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Case No. CIV-12-1345-R

REPORT AND RECOMMENDATION

Petitioner, a prisoner appearing pro se, has filed a motion for leave to proceed *In Forma Pauperis*, ECF No. 2. The undersigned Magistrate Judge reviewed the pleadings filed by Petitioner and entered an Order, ECF No. 7, notifying Petitioner that the motion was deficient because it was missing the financial information required by 28 U.S.C. 1915 (a)(1) and the original signature of an authorized officer of the penal institution. The Petitioner was ordered to cure this deficiency by January 2, 2013, and advised that if the deficiency was not cured, the undersigned would recommend the dismissal of the action without prejudice. As of this date, Petitioner has failed to comply with the Order or file any further pleadings with the Court.

Petitioner's lack of interest in complying with the Court's order combined with the Court's attempt to manage and control its caseload warrant a dismissal of the Petition without prejudice. See *Gripe v. City of Enid, Okla.*, 312 F.3d 1184, 1188 (10th Cir, 2002) (Federal Rules of Civil Procedure authorize sanctions, including dismissal, for the failure to comply with court's orders). See also *Nasious v. Two Unknown B.I.C.E. Agents at Arapahoe County Justice Center*, 492 F.3d 1158, 1161 n.2, 1162 (10th Cir. 2007) (*sua sponte* dismissal for failure to comply with court's orders permitted under federal rules, and court need not follow any particular procedures in dismissing actions

without prejudice for failure to comply).

It is therefore recommended that Petitioner's Application to Proceed in District Court Without Prepaying Fees or Costs, ECF No. 2, be **DENIED**, and that he be ordered to prepay the full \$5 filing fee for this action to proceed. 28 U.S.C. § 1915(a)(1). *See Lister v. Department of the Treasury*, 408 F.3d 1309, 1312 (10th Cir. 2005) (magistrate judge should have issued a report and recommendation, recommending denial of the motion to proceed *in forma pauperis*). It is further recommended that this action be dismissed without prejudice to refiling unless Petitioner pays the \$5 filing fee in full to the Clerk of the Court within twenty (20) days of any order adopting this Report and Recommendation.

Petitioner is advised of his right to file an objection to this Report and Recommendation with the Clerk of Court by **February 19, 2013**, in accordance with 28 U.S.C. § 636 and Fed.R.Civ.P. 72. Plaintiff is further advised that any failure to make timely objection to this Report and Recommendation waives the right to appellate review of the factual and legal issues addressed herein. *Moore v. United States*, 950 F.2d 656 (10th Cir. 1991).

This Report and Recommendation disposes of all issues referred to the undersigned Magistrate Judge in the captioned matter.

ENTERED on February 1, 2013.



SHON T. ERWIN
UNITED STATES MAGISTRATE JUDGE